



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RE APPLICATION OF:

**Alexander K. Mills**

**FOR: Device and Method for Noninvasive  
Continuous Determination of  
Physiologic Characteristics**

SERIAL NO: 10/773,596

FILED: February 6, 2004

ART UNIT NO: 3736

EXAMINER: Mallari, P.

DOCKET NO: WT-02-004DIV2

**PETITION TO ACCEPT AN UNINTENTIONALLY  
DELAYED PRIORITY CLAIM UNDER 37 C.F.R. 1.78(a)**

Commissioner for Patents  
Box DAC  
P.O. Box 1450  
Alexandria, VA 22313

Dear Sir:

On October 6, 2000, U. S. Application No. 09/684,104, entitled "Method for Noninvasive Continuous Determination of Physiologic Characteristics", was filed in the USPTO. Priority to U.S. Provisional Application No. 60/158,097 was duly claimed. The named inventor on the application, which issued as U.S. Pat. No. 6,537,225 on March 25, 2003, is Alexander K. Mills.

On July 15, 2002, U.S. Divisional Application No. 10/196,474 was filed in the USPTO. Priority to U.S. Application Nos. 09/684,104 and 60/158,097 was duly claimed. The named inventor on the application, which issued as U.S. Pat. No. 6,719,705 on April 13, 2004, is similarly Alexander K. Mills.

On February 6, 2004, the above referenced divisional application was filed in the USPTO. The named inventor on the application, which is still pending, is also Alexander K. Mills.

The Utility Patent Application Transmittal Form that accompanied the subject divisional application indicated that the above referenced application was a divisional application of parent Application No. 09/684,104, without reference to prior Application No. 10/196,474. The specification also failed to provide the appropriate reference to the prior filed applications, i.e. Application Nos. 09/684,104 and 10/196,474. It is respectfully submitted that the noted inadvertent errors were unintentional.

On December 13, 2004, our office received the first substantive Office Action in the subject application. As set forth in the Declaration of Ralph C. Francis, filed concurrently herewith, upon receipt of the Action it was noted, for the first time, that the claim for domestic priority was incorrectly submitted with the application.

Applicant thus respectfully submits that the entire delay between the date the priority claim was due, i.e., February 6, 2004, and the date the claim is being submitted was unintentional.

Applicant submits herewith the requisite surcharge under 37 C.F.R. 1.17(t) in the amount of \$1370.00.

Applicant accordingly respectfully requests that the Applicant's claim of priority to Application No. 10/196,474 be accepted.

Respectfully submitted,  
FRANCIS LAW GROUP

By: 

Ralph C. Francis  
Reg. No. 38,884

Dated: December 21, 2004  
1942 Embarcadero  
Oakland, CA 94606  
Tel: (510) 533-1100

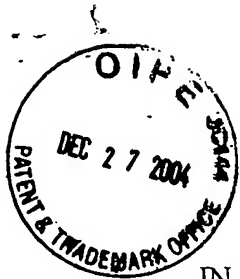
### CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service on this date 12-22-04 in an envelope as "First Class Mail" addressed to the Commissioner for Patents, Box DAC, P.O. Box 1450, Alexandria, VA 22313-1450.

Danielle Gragg

Name of person mailing document

Danielle Gragg



C O P Y

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**Declaration of Ralph C. Francis In Support of Petition  
to Accept an Unintentionally Delayed Priority Claim  
Under 37 C.F.R. 1.78(a)**

I, Ralph C. Francis, hereby declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and such willful false statements may jeopardize the validity of the application referenced above or any patent issued thereon.

1. On October 6, 2000, U. S. Application No. 09/684,104, entitled "Method for Noninvasive Continuous Determination of Physiologic Characteristics", was filed in the USPTO. Priority to U.S. Provisional Application No. 60/158,097 was duly claimed. The named inventor on the application, which issued as U.S. Pat. No. 6,537,225 on March 25, 2003, is Alexander K. Mills.

2. On July 15, 2002, U.S. Divisional Application No. 10/196,474 was filed in the USPTO. Priority to U.S. Application Nos. 09/684,104 and 60/158,097 was duly claimed. The named inventor on the application, which issued as U.S. Pat. No. 6,719,705 on April 13, 2004, is similarly Alexander K. Mills.

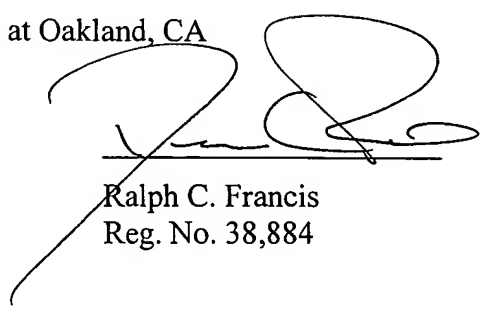
3. On February 6, 2004, the above referenced divisional application was filed in the USPTO. The named inventor on the application, which is still pending, is also Alexander K. Mills.

4. The Utility Patent Application Transmittal Form that accompanied the subject divisional application indicated that the above referenced application was a divisional application of parent Application No. 09/684,104, without reference to prior Application No. 10/196,474. The specification also failed to provide the appropriate reference to the prior filed applications, i.e. Application Nos. 09/684,104 and 10/196,474. It is respectfully submitted that the noted inadvertent errors were unintentional.

5. On December 13, 2004, our office received the first substantive Office Action in the subject application. Upon receipt of the Action it was noted, for the first time, that the claim for domestic priority was incorrectly submitted with the application.

6. The entire delay between the date the priority was due, i.e., February 6, 2004, and the date the claim is being submitted was unintentional.

Executed this 22<sup>nd</sup> day of December, 2004 at Oakland, CA



Ralph C. Francis  
Reg. No. 38,884



### CERTIFICATE OF MAILING

I hereby certify that the enclosed documents are being deposited with the United States Postal Service on this date 12-22-04 in an envelope as "First Class Mail" addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Danielle Gragg

Name of person mailing document

Danielle Gragg